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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF831

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Lighthouse Repair and Tour Operations at Northwest Seal Rock, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the St. George Reef Lighthouse Preservation Society (Society) to incidentally harass, by Level B harassment only, marine mammals during aircraft operations, lighthouse renovations, and tour operations associated with preservation of the St. George Reef Lighthouse Station on Northwest Seal Rock (NWSR) in the northeast Pacific Ocean.

DATES: This authorization is effective from February 19, 2018 through February 18, 2019.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the IHA and supporting documents, as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption

of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On October 18, 2017, NMFS received a request from the Society for an IHA to take marine mammals incidental to restoration, maintenance, and tour operations at St. George Reef Lighthouse (Station) located on Northwest Seal Rock (NWSR) offshore of Crescent City, California in the northeast Pacific Ocean. NMFS determined the application adequate and complete on January 17, 2018. The Society's request was for take of California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), northern fur seals (*Callorhinus ursinus*) and Pacific harbor seals (*Phoca vitulina richardii*) by Level B harassment only. Neither the Society nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS has previously issued seven IHA's to the Society for similar work between 2010 and 2017 (75 FR 4774, January 29, 2010; 76 FR 10564, February 25, 2011; 77 FR 8811, February 15, 2012; 78 FR 71576, November 29, 2013; 79 FR 6179, February 3, 2014; 81 FR 9440, February 23, 2016; and 82 FR 11005, February 17, 2017). The Society complied with all the requirements (*e.g.*, mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Estimated Take section.

Description of Specified Activity

The Station, listed in the National Park Service's National Register of Historic Places, is located on NWSR offshore of Crescent City, California in the northeast Pacific Ocean. The Station, built in 1892, rises 45.7 meters (m) (150 feet (ft)) above sea level. The structure consists of hundreds of granite blocks topped with a cast iron lantern room and covers much of the

surface of the islet. The purpose of the project is to restore the lighthouse, to conduct tours, and to conduct annual and emergency maintenance on the Station's optical light system.

The Society proposes to conduct aircraft operations, lighthouse renovation, and periodic maintenance on the Station's optical light system on a monthly basis. The Society's activity will occur on a monthly basis over one weekend, November through April. The following specific aspects of the activities will likely result in the take of marine mammals: acoustic and visual stimuli from (1) helicopter landings/takeoffs; (2) noise generated during restoration activities (*e.g.*, painting, plastering, welding, and glazing); (3) maintenance activities (*e.g.*, bulb replacement and automation of the light system); and (4) human presence.

A detailed description of the planned activities is provided in the *Federal Register* notice (83 FR 8841, March 1, 2018). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that *Federal Register* notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA was published in the *Federal Register* on March 1, 2018 (83 FR 8841). During the 30-day public comment period, the Marine Mammal Commission (Commission) submitted a letter on March 7, 2018. The Commission provided comments as described below and concurred with NMFS's findings that the recommended issuance of an IHA to the Society, subject to the inclusion of the mitigation, monitoring, and reporting measures.

Comment: The Commission requested clarification of certain issues associated with NMFS's notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements.

The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of 101(a)(5)(D) of the MMPA.

Response: The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal of an IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought.

Importantly, such renewals would be limited to where the activities are identical or nearly identical to those analyzed in the proposed IHA, monitoring does not indicate impacts that were not previously analyzed and authorized, and the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the *Federal Register*, as are all IHAs. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the species likely to be affected by the planned activities, including brief introductions to the species and relevant stocks as well as available information

regarding population trends and threats, and information regarding local occurrence, were provided in the *Federal Register* notice for the proposed IHA (83 FR 8841, March 1, 2018). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that *Federal Register* notice for these descriptions as well as to NMFS's website (www.nmfs.noaa.gov/pr/species/mammals/) for generalized species accounts.

Table 1 – Marine Mammals in the Vicinity of Northwest Seal Rock.

| Common name | Scientific name | Stock | ESA/MMPA status; Strategic (Y/N) ¹ | Stock abundance (CV, N _{min} , most recent abundance survey) ² | PBR | Annual M/SI ³ |
|----------------------------------------------|---------------------------------|---------------------|-----------------------------------------------|------------------------------------------------------------------------------------|-------|--------------------------|
| Order Carnivora – Superfamily Pinnipedia | | | | | | |
| Family Otariidae (eared seals and sea lions) | | | | | | |
| California sea lion | <i>Zalophus californianus</i> | U.S. | -; N | 296,750 (n/a; 153,337; 2011) | 9,200 | 389 |
| Steller sea lion | <i>Eumetopias jubatus</i> | Eastern U.S. | -; N | 41,638 (n/a; 41,638; 2015) | 2,498 | 108 |
| Northern fur seal | <i>Callorhinus ursinus</i> | California Breeding | -; N | 14,050 (n/a; 7,524; 2013) | 451 | 1.8 |
| Family Phocidae (earless seals) | | | | | | |
| Pacific harbor seal | <i>Phoca vitulina richardii</i> | California | -; N | 30,968 (n/a; 27,348; 2012) | 1,641 | 43 |

1 - Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

2- NMFS marine mammal stock assessment reports online at: www.nmfs.noaa.gov/pr/sars/. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable

3 - These values, found in NMFS's SARs, represent annual levels of human-caused mortality (M) plus serious injury (SI) from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Potential Effects of Specified Activities on Marine Mammals and their Habitat

The effect of stressors associated with the specified activities (*e.g.*, helicopter operations) has the potential to result in behavioral harassment of marine mammals in the vicinity of the action areas. The *Federal Register* notice for the proposed IHA (83 FR 8841, March 1, 2018) included a discussion of the effects of such disturbance on marine mammals, therefore that information is not repeated here.

NMFS described potential impacts to marine mammal habitat in detail in our *Federal Register* notice of proposed authorization (83 FR 8841, March 1, 2018). In summary, the project activities will not modify existing marine mammal habitat. Because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS's consideration of "small numbers" and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to aircraft operations and lighthouse maintenance activities. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized.

Table 2. Disturbance Scale of Pinniped Responses to In-Air Sources to Determine Take.

| Level | Type of response | Definition |
|-------|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Alert | Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. |
| 2* | Movement | Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees. |
| 3* | Flush | All retreats (flushes) to the water. |

* Only Levels 2 and 3 are considered take, whereas Level 1 is not.

NMFS assumes that pinnipeds that move greater than two body lengths to longer retreats over the beach, or if already moving, a change of direction of greater than 90 degrees in response to the presence of surveyors, or pinnipeds that flush into the water, are behaviorally harassed, and thus subject to Level B taking (Table 2).

Below we describe how the take is estimated.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

For the 2010 season, the Society reported that no Steller sea lions were present in the vicinity of NWSR during restoration activities (SGRLPS 2010). Based on the monitoring report for the 2011 season, the maximum numbers of Steller sea lions present during the April and November 2011, work sessions were 2 and 155 animals, respectively (SGRLPS 2012). During

the 2012 season, the Society did not observe any Steller sea lions present on NWSR during restoration activities. The Society did not conduct any operations for the 2013-2014, 2014-2015, and 2015-2016 seasons. The Society reported no Steller sea lions observed in the 2016-2017 and 2017-2018 work seasons (T. McNamara, pers. comm., 2018).

Based on the monitoring report for the 2011 season, the maximum numbers of California sea lions present during the April and November, 2011 work sessions were 2 and 160 animals, respectively (SGRLPS 2012). There were no California sea lions present during the March, 2012 work session (SGRLPS 2012). The Society reported 16 California sea lions observed in March 2017 and no California sea lions present in April 2017. The Society also reported that 16 California sea lions were observed in November 2017. (Terry McNamara, pers. comm., 2018).

For the 2010, 2011, and 2012 work seasons, the Society did not observe any northern fur seals present on NWSR during restoration activities (SGRLPS 2010; 2011; 2012). No northern fur seals were observed during the 2016-2017 and 2017-2018 work seasons (Terry McNamara, pers. comm., 2018).

For the 2010 and 2011 seasons, the Society did not observe any Pacific harbor seals present on NWSR during restoration activities (SGRLPS 2010; 2011). During the 2012 season, the Society reported sighting a total of two harbor seals present on NWSR (SGRLPS 2012). No harbor seals were observed during the 2016-2017 and 2017-2018 work seasons (Terry McNamara, pers. comm., 2018).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Based on the Society's previous monitoring reports, NMFS estimates that approximately 2,880 California sea lions (calculated by multiplying the maximum single-day count of California sea lions present on NWSR (160) by 18 days of the restoration, maintenance, and touring activities), 2,790 Steller sea lions (calculated by multiplying the maximum single-day count of Steller sea lions that could be present (155) by 18 days of the restoration, maintenance, and touring activities), 36 Pacific harbor seals (calculated by multiplying the maximum single-day count of harbor seals present on NWSR (2) by 18 days), and 18 Northern fur seals (calculated by multiplying the maximum number of northern fur seals present on NWSR (1) by 18 days) could be potentially affected by Level B behavioral harassment over the course of the IHA (Table 3). NMFS bases these estimates of the numbers of marine mammals that might be affected on consideration of the number of marine mammals that could be disturbed appreciably by approximately 75 hours of aircraft operations over the course of the 18 days of activity.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and their Habitat

Time and Frequency—The Society shall conduct restoration and touring activities at a maximum of once per month over the course of the year, with the exception of between May 1, 2018 through October 31, 2018 (barring potential emergency light repairs during this time). Each restoration session shall last no more than three days. Maintenance of the light beacon shall occur only in conjunction with restoration activities (except if an emergency light repair is needed from May 1, 2018 through October 31, 2018).

Helicopter Approach and Timing Techniques—The Society shall ensure that its helicopter approach patterns to the Station and timing techniques shall be conducted at times when marine mammals are less likely to be disturbed. To the extent possible, the helicopter will

approach NWSR when the tide is too high for the marine mammals to haul out on NWSR. Additionally, since the most severe impacts (stampede) precede rapid and direct helicopter approaches, the Society's initial approach to the station must be offshore from the island at a relatively high altitude (*e.g.*, 800 – 1,000 ft, or 244 – 305 m). Before the final approach, the helicopter shall circle lower and approach from area with the lowest pinniped density. If for any safety reasons (*e.g.*, wind condition) the Society cannot conduct these types of helicopter approach and timing techniques, they must postpone the restoration and maintenance activities for that day.

Avoidance of Visual and Acoustic Contact with People on Island—The Society shall instruct its members and restoration crews to avoid making unnecessary noise and not expose themselves visually to pinnipeds around the base of the station. Although CCR reported no impacts from these activities in the 2001 study, it is relatively simple for the Society to avoid this potential impact. The door to the lower platform shall remain closed and barricaded to all tourists and other personnel since the lower platform is used at times by pinnipeds.

NMFS has determined that the above mentioned mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or

impacts on populations of marine mammals that are expected to be present in the action area.

Effective reporting is critical both to compliance and to ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS will contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring

As part of its IHA application, the Society shall sponsor marine mammal monitoring, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the IHA. These requirements include:

- A NMFS approved, experienced biologist will be present on the first flight of each day of the activity. This observer must be able to identify all species of pinnipeds expected to use the island, and qualified to determine age and sex classes when viewing conditions allow. The observer shall record data including species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the activities, including location, date, and time of the event. In addition, the Society shall record observations regarding the number and species of any marine mammals either observed in the water or hauled out; and
- Aerial photographic surveys to provide an accurate means of documenting species composition, age and sex class of pinnipeds using the project site during human activity periods. The Society shall complete aerial photo coverage from the same helicopter used to transport the Society's personnel to the island during restoration trips. The Society shall take photographs of all marine mammals hauled out on the island from an altitude greater than 300 m (984 ft) by a skilled photographer, on the first flight of each day of activities. These photographs will be forwarded to a biologist capable of discerning marine mammal species. Data shall be provided to us in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see *Reporting*). The original photographs will be made available to us or other marine mammal experts for inspection and further analysis.

As detailed above, the monitoring requirements in relation to the Society's activities include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the restoration activities, including location, date, and time of the event. In

addition, the Society shall record observations regarding the number and species of any marine mammals either observed in the water or hauled out.

By completing the requirements mentioned above, the Society will add to the knowledge of pinnipeds in the action area by noting observations of: (1) unusual behaviors, numbers, or distributions of pinnipeds, enabling appropriate personnel to conduct future follow-up research; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

If at any time injury, serious injury, or mortality of the species for which take is authorized occurs, or if take of any other kind of marine mammal occurs, and such action is believed to be a result of the Society's activities, the Society shall suspend restoration and tour activities and contact NMFS immediately. NMFS will then determine how best to proceed to ensure another injury or death does not occur and to guarantee the applicant remains in compliance with the MMPA.

Monitoring requirements in relation to the Society's restoration activities shall include observations made by the Society. Information recorded shall include species counts (with age/sex classes when possible) of animals present before approaching, numbers of observed disturbances, and descriptions of the disturbance behaviors during the helicopter operations, including relative location, date, and time of the event. For consistency, any reactions by pinnipeds to researchers shall be recorded according to the three-point scale shown in Table 2. Note that only observations of disturbance Levels 2 and 3 should be recorded as takes.

Reporting

A draft final report must be submitted to NMFS Office of Protected Resources within 90 days of conclusion of restoration activities in April. The report must include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. The Society must submit a final report to NMFS within 30 days after receiving comments from NMFS on the draft report. If the Society receives no comments from NMFS on the report, NMFS will consider the draft report to be the final report.

The report must describe the operations conducted and sightings of marine mammals near the project. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report must provide:

1. A summary and table of the dates, times, and weather during all activities.
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities.
3. An estimate of the number (by species) of marine mammals exposed to human presence associated with the Society's activities.
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, stampede), society personnel shall immediately cease the specified activities and immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Assistant West Coast Regional Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available)

The Society shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with the Society to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Society shall not resume their activities until notified by us via letter, email, or telephone.

In the event that the Society discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), the Society shall immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, (562) 980-3230. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the Society to determine whether modifications in the activities are appropriate.

In the event that the Society discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Society shall report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Assistant West Coast Regional Stranding Coordinator within 24 hours of the discovery. Society personnel shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. The Society shall continue their survey activities while NMFS reviews the circumstances of the incident.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’s implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are

incorporated into this analysis via their impacts on the environmental baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Although the Society's survey activities may disturb a small number of marine mammals hauled out on NWSR, NMFS expects those impacts to occur to a small, localized group of animals for a limited duration (*e.g.*, six hours in one day). Marine mammals will likely become alert or, at most, flush into the water in reaction to the presence of the Society's personnel during the activities. Disturbance will be limited to a short duration, allowing marine mammals to reoccupy NWSR within a short amount of time. Thus, the authorized action is unlikely to result in long-term impacts such as permanent abandonment of the area because of the availability of alternate areas for pinnipeds to avoid the resultant acoustic and visual disturbances from the restoration activities and helicopter operations. Results from previous monitoring reports also show that the pinnipeds returned to NWSR and did not permanently abandon haulout sites after the Society conducted their activities.

With the exception of emergency repairs, which are unlikely to occur, the Society's activities occur during the least sensitive time (*e.g.*, November through April, outside of the pupping season) for hauled out pinnipeds on NWSR. Thus, pups or breeding adults will likely not be present during the activity days.

Moreover, the Society's mitigation measures regarding helicopter approaches and restoration site ingress and egress minimize the potential for stampedes and large-scale movements. Thus, the potential for large-scale movements and stampede leading to injury, serious, injury, or mortality is low.

Any noise attributed to the Society's helicopter operations on NWSR will be short-term (approximately six minutes per trip). We expect the ambient noise levels to return to a baseline state when helicopter operations have ceased for the day. As the helicopter lands and takes off from the station, sound levels are below the thresholds for airborne pinniped disturbance at the landing pad which is 15 m (48 ft) above the rocks. Additionally, the pinnipeds will likely flush before the helicopter approached NWSR, further increasing the distance between the pinnipeds and the received sound levels on NWSR.

If pinnipeds are present on NWSR, Level B behavioral harassment of pinnipeds may occur during helicopter landing and takeoff from NWSR due to the pinnipeds temporarily moving from the rocks and lower structure of the Station into the sea due to the noise and appearance of a helicopter during approaches and departures. It is expected that all or a portion of the marine mammals hauled out on NWSR will depart the rock and slowly move into the water upon initial helicopter approaches. The movement to the water will likely be gradual due to the required controlled helicopter approaches (see *Mitigation* for more details), the small size of the aircraft, the use of noise-attenuating blade tip caps on the rotors, and behavioral habituation on the part of animals as helicopter trips continue throughout the day. During the sessions of helicopter activity, if present on NWSR, some animals may be temporarily displaced from the island and either raft in the water or relocate to other haulouts.

Sea lions have shown habituation to helicopter flights within a day at the project site and most animals are expected to return soon after helicopter activities cease for that day. By clustering helicopter arrivals/departures within a short time period, we expect animals present to show less response to subsequent landings. NMFS anticipates no impact on the population size

or breeding stock of Steller sea lions, California sea lions, Pacific harbor seals, or Northern fur seals.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- The impacts to animals present will be of limited duration (*i.e.*, at maximum three days a month);
- The impacts will be of limited intensity (*i.e.*, temporary flushing at most); and
- No injury or mortality is anticipated or authorized.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

As mentioned previously, NMFS estimates that the Society's activities could potentially affect, by Level B harassment only, four species of marine mammals under our jurisdiction. For

each species, these estimates are small numbers (less than one percent of the affected stocks of California sea lions, Pacific harbor seals, and Northern fur seals, and less than seven percent of the stock of Steller sea lions) relative to the population size (Table 3). However, actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at the time of the survey activities.

Table 3. The percentage of stock affected by the number of takes per species.

| Species | Maximum Number per Day | Days of Activity | Take Number | Stock Abundance | Percent of Stock |
|-------------------------------------------------------|------------------------|------------------|-------------|-----------------|------------------|
| California sea lion (<i>Zalophus californianus</i>) | 160 | 18 | 2,880 | 296,750 | 0.97 |
| Steller sea lion (<i>Eumetopias jubatus</i>) | 155 | 18 | 2,790 | 41,638 | 6.7 |
| Pacific harbor seal (<i>Phoca vitulina</i>) | 2 | 18 | 36 | 30,968 | 0.35 |
| Northern fur seal (<i>Callorhinus ursinus</i>) | 1 | 18 | 18 | 14,050 | 0.12 |

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our action (*i.e.*, the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, we have issued an IHA to the Society for conducting the described activities related to lighthouse station restoration, maintenance, and tours from February 19, 2018 through February 18, 2019 provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: April 26, 2018

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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